

NO. 49121-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Appellant,

v.

SIERRA WALL,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable Nelson E. Hunt, Judge

BRIEF OF RESPONDENT

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A. RESTATEMENT OF THE ISSUE

Respondent moved for a deferred disposition, stipulating to the facts contained in the affidavit for probable cause, and the State did not oppose the motion. The court determined that the stipulated facts were insufficient to establish guilt and dismissed the charge. Where the deferred disposition statute requires a determination of guilt based on the stipulated facts, did the court err in dismissing the action at the hearing in which the motion was presented?

B. STATEMENT OF THE CASE

On November 16, 2015, the Lewis County Prosecuting Attorney charged respondent Sierra Wall, a juvenile, with one count of harassment by threat to kill. CP 3-4; RCW 9A.46.020(1)(a)(i) and (2)(b). The declaration of probable cause stated that on November 9, 2015, someone had written on a desk at Centralia High School, “Ima shoot up the school – 11/10.” CP 9. The investigating officer compared some of Wall’s school work to the writing and came to the conclusion she was the suspect. He determined that Wall had sat in that desk before the writing was found, she had turned in homework that day using a black pen, and the writing on the desk was done in black pen. Id. The officer interviewed Wall, who

denied the allegation. Wall later confessed to writing on the desk, saying she meant to erase it but had forgotten. Id.

On December 22, 2015, Wall filed a motion and declaration for deferred disposition pursuant to RCW 13.40.127. CP 6-10. In compliance with the statute, she waived her right to call and confront witnesses and to a speedy dispositions, she stipulated to the admissibility of the facts contained in the written police report, and she acknowledged that the report would be entered and used to support a finding of guilt and impose disposition if she failed to comply with the terms of supervision. CP 6. She acknowledged the direct consequences of the charge should the case proceed to disposition. CP 7. The declaration of probable cause prepared by the investigating officer was attached to the motion. CP 9.

At a trial confirmation hearing on December 22, 2015, the State informed the court that it anticipated Wall's motion for a deferred disposition and was not opposed to it. RP 2. The court questioned whether the affidavit of probable cause alleged facts sufficient to prove the charge of harassment, noting that there was no named victim and no threat to kill. The court acknowledged that the facts presented might establish some other crime, but they did not establish the charged crime. RP 2-4. The court noted that it was relying on the affidavit of probable cause in ruling on the motion for deferred disposition. RP 5. Without more, it

could not find beyond a reasonable doubt that Wall was guilty. Thus, there was no need for a deferred disposition. RP 6. Because the affidavit of probable cause contained insufficient evidence to show Wall was guilty of the crime charged, the court dismissed the case. RP 7; CP 11.

The court denied the State's request to reset the matter for the next week so it could look into these issues, noting that it was ruling on the motion for deferred disposition for which the case was set that day. It was not entering the deferred disposition because it could not find beyond a reasonable doubt that Wall was guilty of the charged offense. RP 7-8. The court stated that the State was free to bring some other motion in the future. RP 8.

The State filed a motion for reconsideration of the order of dismissal, arguing that CrR 8.3(b) allows the Court, after notice and hearing, to dismiss any criminal prosecution. CP 12-13. The court denied the motion for reconsideration, and the State appealed. CP 14-15.

C. ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN
DISMISSING THE CHARGE AGAINST WALL.

A juvenile charged with a criminal offense may, under certain circumstances, move for a deferred disposition. RCW 13.40.127. A deferred disposition provides the juvenile the opportunity, despite a plea

or finding of guilt, to have the case dismissed with prejudice upon full compliance with supervision conditions and restitution requirements. RCW 13.40.127(4), (5), (9); State v. Mohamoud, 159 Wn. App. 753, 758-59, 246 P.3d 849 (2011).

Under the deferred disposition statute, the trial court may, upon a motion made at least 14 days before trial, “continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty.” RCW 13.40.127(2). A juvenile who agrees to a deferred disposition must (a) stipulate to the admissibility of the facts in the written police report, (b) acknowledge that the report will be entered and used to support a finding of guilt and to impose disposition if the juvenile fails to comply with the terms of supervision, (c) waive the rights to a speedy disposition and to call and confront witnesses, and (d) acknowledge the direct consequences of being found guilty and the direct consequences if an order of disposition is entered. RCW 13.40.127(3). Following this stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court defers entry of an order of disposition. RCW 13.40.127(4).

In this case, Wall moved for a deferred disposition within the time limit set by statute. In her written motion she stipulated to the police report, acknowledged that the report would be used in a determination of guilt and disposition, waived her rights, and acknowledged the

consequences of a guilty finding and disposition. CP 6-7. Wall did not enter a guilty plea. Rather, the probable cause statement was presented to the court as part of the motion for a determination of guilt as contemplated by the statute. CP 8-9; RCW 13.40.127(3), (4). The court correctly acknowledged that it had to make its decision on the motion for deferred disposition based on what it had been provided, which was the affidavit of probable cause. RP 5-7.

The statute requires the court to make a determination of guilt before the order deferring disposition is entered, giving the court discretion to “continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty”. RCW 13.40.127(2). Entry of the order of disposition is deferred, but the finding of guilt must be made before the court may grant a deferred disposition. RCW 13.40.127(4) (“Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.”). It follows then, that when the court is asked to rule on a motion for deferred disposition, it must determine whether the stipulated facts support a finding of guilt. In this case, the court reviewed the probable cause affidavit and found it did not support a finding of guilt. The court therefore denied the deferred disposition and dismissed the case.

The State contends that the court abused its discretion in dismissing the charge because the State did not have notice or a hearing on the court's intention to dismiss the action. Br. of App. at 7-9. It bases this argument on CrR 8.3(b):

The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

Nowhere in the record did the court indicate it was dismissing the charge under that rule, however. Instead, the record shows that the court was ruling on Wall's motion for a deferred disposition, making a finding required by that motion, and taking appropriate action based on its finding. Moreover, the record shows that the State anticipated that the motion would be presented at the trial confirmation hearing, and it was not opposed to the motion. RP 2.

The State further contends that the trial court abused its discretion in denying the State's motion for reconsideration, which cited to the notice and hearing requirement of CrR 8.3(b). Br. of App. at 11-12. The State argues that at a minimum it should be granted a hearing as required under CrR 8.3(b). Br. of App. at 11 n.5. No authority is cited in support of this argument other than CrR 8.3(b), which is inapplicable in this case because the trial court did not dismiss the case pursuant to that rule. A trial court

abuses its discretion only when its decision is manifestly unreasonable or is based on untenable reasons or grounds. State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

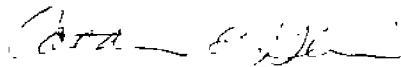
The State has failed to show that the trial court abused its discretion in either dismissing the charge or denying the motion for reconsideration, and the court's orders should be affirmed.

D. CONCLUSION

For the reasons addressed above, this Court should affirm the order of dismissal.

DATED December 23, 2016.

Respectfully submitted,



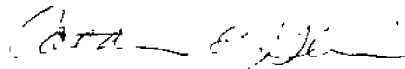
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Certification of Service by Mail

Today I a mailed copy of the Brief of Respondent in *State v. Sierra Wall*, Cause No. 49121-4-II as follows:

Sierra Wall
1208 #A Windsor Ave
Centralia, WA 98531

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Catherine E. Glinski
Done in Port Orchard, WA
December 23, 2016

GLINSKI LAW FIRM PLLC

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